

Cover-up Report Assailed

Ehrlichman's Move to Use Data Opposed

By George Lardner Jr.
Washington Post Staff Writer

With John D. Ehrlichman sitting on the witness stand, Watergate prosecutors accused him yesterday of handing President Nixon a "phony" report on the Watergate scandal that covered up what both men already knew.

Chief trial prosecutor James F. Neal denounced the undated report as a transparent "charade" when Ehrlichman's attorney launched an attempt to use it as evidence in defense of the former White House aide.

Adding their protests, lawyers for three of the other defendants at the Watergate cover-up trial here complained that the handwritten document was so prejudicial to them that it could destroy their rights to a fair trial.

Prosecutor Neal assailed it as part of the cover-up and said it even skipped over many of the disclosures that White House Counsel John W. Dean III had already made to the President on March 21, 1973.

"Dean gives the President of the United States a far more complete, far better report than this and he doesn't try to protect himself," Neal declared. "He doesn't make it—I might as well say it—as phony as this report."

The dispute bubbled up shortly after Ehrlichman took the stand in his own defense yesterday afternoon and contended that his closest tie to the scandal was when Nixon assigned him to ferret out the facts in the spring of 1973.

The jurors were ushered out of the courtroom as soon as the questioning turned to the eight-page report which Ehrlichman said resulted from that assignment.

not been made public before, is heavily laced with incriminating statements about former Attorney General John N. Mitchell. It also named Nixon re-election committee advisers Robert C. Mardian and Kenneth Wells Parkinson as apparent "participants" in efforts to keep the original Watergate defendants from talking.

In a brief allusion to the controversial report earlier in the trial, Ehrlichman had said he discovered it only recently, at the bottom of a carton of his White House files.

Under questioning yesterday by U.S. District Court Judge John J. Sirica, the former White House domestic adviser said he composed the report at his home on the night of Friday, April 13, 1973 — after a two-week investigation for Nixon — and gave it to the President the next day.

"It was by no means an exhaustive investigation," Ehrlichman volunteered.

His chief defense attorney, William S. Frates, however, defended it as "a good-faith report" on Ehrlichman's part and called it "absolutely essential to the defense of John Ehrlichman."

Prosecutor Neal charged in reply that the document was "the ultimate in 'drawing the wagons around the White House'" as the cover-up crumbled and Nixon and his aides began talking of making Mitchell the fall guy.

Ticking off samples of what he said the report ignored, Neal said Ehrlichman wrote at one point that Dean had been enlisted by Mitchell after the June 17, 1972, Watergate arrests to get White House help in raising "sustenance and attorneys' fees" for the defendants, but was "unsuccessful in securing aid."

"The best he (Dean) could get," Ehrlichman asserted in the report, "was a referral to Herb Kalmbach who may have helped."

Neal pointed out this flew squarely in the face of testimony by Kalmbach, once the President's personal attorney and chief behind-the-scenes fund-raiser, who said he stuck with the assignment only after Ehrlichman told him he had to "go forward" with it.

"He was absolutely definite on that," Kalmbach said last month of a July 26, 1972, White House meeting with Ehrlichman. "It was in the form of a directive. I remember with absolute certainty him (Ehrlichman) saying, 'Herb, they'd have our heads in their lap... if secrecy wasn't

Ehrlichman's claim months later that Kalmbach "may have helped." Neal declared: "Now what kind of a report is that from a man who had the knowledge that this man held?"

Delivering what bordered on a final summation, the prosecutor charged that the Ehrlichman report to the President was no more than "one co-conspirator giving a self-serving statement to another co-conspirator."

In his own testimony yesterday about other conversations with Kalmbach, Ehrlichman said Kalmbach told him at a meeting in Newport Beach, Calif., on July 14, 1972, that he was by then "in fact raising the attorneys' fees" for the Watergate defendants.

Ehrlichman sat on the witness stand with a glum look on his face as Neal made his attack. The prosecutor said he was speaking up somewhat reluctantly because he was tipping his hand on what he plans to cross-examine Ehrlichman about.

"Do you want Mr. Ehrlichman in here?" Judge Sirica asked after the jurors had left the room.

"I'm afraid you can't put a defendant outside the courtroom, your honor," Neal replied.

At that, Frates smiled and announced jokingly, "We'll leave."

The judge fought a grin of his own and then called for order as laughter rippled through the courtroom.

Ehrlichman had said that Nixon assigned him "to the Watergate matter... in case of John Dean" on March 30, 1972. Dean had been asked to make a report of his own following his explosive disclosures to the President on March 21 about the Watergate break-in and the subsequent cover-up, but he had failed to do so.

Prosecutor Neal, however, said that even the Dean report was supposed to be an attempt to "draw the wagons around the White House" in protective reaction to the mushrooming scandal. He said this was clear from a March 22, 1973, White House meeting between Nixon, Ehrlichman, Dean, Mitchell and former White House chief of staff H. R. (Bob) Haldeman.

When Haldeman and then Dean suggested that the report would be just "a limited hang-out," a tape of that conversation showed, Ehrlichman went a step further and said

When Dean said sarcastically, "Mr. Nixon, who has heard ten times the facts, tells Mr. Ehrlichman, 'you go get me a report.'"

Holding up a copy of Ehrlichman's findings, the prosecutor thundered, "This is a modified limited hang-out." He said it didn't even mention the secret \$350,000 White House fund that had been used to make payments to the Watergate defendants with Haldeman's approval, after other funds had run low.

Despite that, Neal said, the Ehrlichman report told the President that "with the exception of John Dean, I don't know that any White House people were aware of any specific acts of obstruction of justice or sought to procure any person's testimonial silence."

By April 14, 1973, the prosecutor reminded the court, Dean had already started talking to government prosecutors. Clearly, Neal said, "Dean has just been moved outside the wagons."

Neal said the government would not object to Judge Sirica's admitting the report as evidence for the jury's consideration. He maintained that it was patently "a charade" and said he was confident the jurors would see it that way, too.

At the same time, the prosecutor said the report hurt the other defendants, especially Mitchell, whom it described at one point as "the key to a full disclosure of facts of the Watergate matter." Ehrlichman also wrote that Watergate spy G. Gordon Liddy "apparently has remained silent on JNM's assurance that he would be given a pardon."

The report, which devoted a total of only one page to the Watergate cover-up as distinct from the break-in and related matters, added that Mitchell was "the target of the Vesco grand jury in New York and of the Klein grand jury" in Washington, D.C.

Defense attorneys for Parkinson and Mardian, who were mentioned only briefly, suggested that the report might be sanitized—with their clients' names left out—but Mitchell's attorneys said that no amount of editing would satisfy them. They called for its complete suppression.

"This report substantiates my thesis that they (at the White House) were trying to make him a fall guy—because there aren't any facts in the damn thing," exclaimed Mitchell's chief lawyer, William G. Hundley.